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No. _____

IN THE

Supreme Court of the United States

October Term, 1960

THOMAS E. MOSHEIM, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

To the Honorable Chief Justice of the United States and the Honorable Associate Justices of the Supreme Court of the United States:

Petitioner, Thomas E. Mosheim, respectfully petitions for writ of certiorari to review the decision of the Court of Appeals for the Fifth Circuit affirming the conviction below for making false oath in a bankruptcy proceeding. The decision of the Court of Appeals is unreported at this time—a copy being attached as Appendix I.

The judgment of the Court of Appeals was entered December 23, 1960, a copy being attached as Appendix II. Petitioner timely filed his petition for rehearing in said court which was denied without opinion January 19, 1961, a copy being attached as Appendix III. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1254(1).

Questions Presented For Review

1. Does the safeguard of the "two witness" rule, which this Court has applied to prosecutions for perjury in *Weiler v. United States* (1944), 323 U.S. 606, apply to this prosecution for making false oath in a bankruptcy proceeding? Does any fundamental distinction exist between prosecutions for perjury (18 U.S.C. §1621) and for making false oath in a bankruptcy proceeding (18 U.S.C. § 152) which would justify the existence of separate standards by which to measure the sufficiency of the evidence?

2. Are informal records kept by petitioner's secretary and checks bearing petitioner's endorsement typed by her equivalent to records kept by the petitioner in his own hand within the meaning of *United States v. Wood* (1840), 14 Pet. 430? Will such evidence support the conviction of this petitioner where there is no evidence that he saw, handled or recorded any of the checks or monies to which the questions before the Trustee and his answers were directed?

3. Did the joinder of a conspiracy count to the substantive counts, where the overt acts alleged in the conspiracy count were essentially the same acts charged as substantive offenses, deprive this petitioner of "due process of law" under the Fifth Amendment to the Constitution of the United States?

Constitutional Provisions And Statutes Involved

Fifth Amendment to the Constitution of the United States:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

18 U.S.C. § 152.

* * *

"Whoever knowingly and fraudulently makes a false oath or account in or in relation to any bankruptcy proceeding; or

* * *

"Shall be fined not more than $5,000 or imprisoned not more than five years, or both."

(See Appendix IV for full text)

18 U.S.C. § 371. Conspiracy to commit offense or to defraud United States

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the

punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor. June 25, 1948, c. 645, 62 Stat. 701.

18 U.S.C. § 1621.

Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorized an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall, except as otherwise expressly provided by law, be fined not more than $2,000 or imprisoned not more than five years, or both. June 25, 1948, c. 645, 62 Stat. 773.

18 U.S.C. § 1001. Statements or entries generally

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

18 U.S.C. § 1015. Naturalization, citizenship or alien registry

(a) Whoever knowingly makes any false statement under oath, in any case, proceeding, or matter relating to, or under, or by virtue of any law of the United States relating to naturalization, citizenship, or registry of aliens; or
* * *

Shall be fined not more than $5,000 or imprisoned not more than five years, or both. June 25, 1948, c. 645, 62 Stat. 752.

Statement of the Case

The petitioner, Thomas E. Mosheim, was called as a witness in a hearing before the Trustee-in-Bankruptcy of Texas Portland Cement Company. At that time he was questioned concerning his relationship to the company as one of its directors, and called upon to identify innumerable checks, letters and documents about which he was then questioned. The charges against the petitioner are based on answers which he gave concerning sums of money paid to Sol Jamail, a co-defendant, by Texas Portland Cement Company. The indictment filed against the petitioner charged him with two counts of "willfully, knowingly, and fraudulently" making a false oath in a bankruptcy proceeding (18 U.S.C. § 152) and one count of conspiring to commit the above offense (18 U.S.C. § 371). The indictment also included one count charging the co-defendant, Sol Jamail, with making a false oath in a bankruptcy proceeding and named Jamail as the conspirator in the conspiracy count. Defendant Jamail appealed from the judgment of the trial court, but is not before this Court on petition for writ of certiorari.

The petitioner had been instrumental in obtaining financing for Texas Portland Cement Company at a time when the Company was in financial distress. Kent B. Diehl, the deposed president of the Company, testified that "the plant never could have been completed without his (Mosheim's) services". As a result of the petitioner's efforts he was elected to the board of directors of the Company—a post which he continued to hold until the summer of 1958 when Diehl plunged the Company into reorganization proceedings at a time when petitioner was attempting to secure additional financial aid. The indictment under which the petitioner is before this Court resulted from